



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-0041]

RIN 1625-AA09

Drawbridge Operation Regulation; Green River, Small-house, KY and Black River, Jonesboro, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the drawbridges across Green River, mile 79.6, Small-house, KY and Black River, mile 41.0, Jonesboro, LA. The Green River bridge was removed in 2008 and the Black River bridge was replaced with a fixed bridge in 2008 and the operating regulations are no longer applicable or necessary.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0041]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the

"SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Eric Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314-269-2378, e-mail Eric.Washburn@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists

for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the CSX Transportation Railroad bridge, that once required draw operations in 33 CFR 117.415(b), was removed from the waterway in 2008 and the US84 bridge, that once required draw operations in 33 CFR 117.427, was removed from the waterway and replaced with a fixed bridge in 2008. Therefore, the regulations are no longer applicable and shall be removed from publication. It is unnecessary to publish an NPRM because this regulatory action does not purport to place any restrictions on mariners but rather removes a restriction that has no further use or value.

Under 5 U.S.C. 553(d)(1), a rule that relieves a restriction is not required to provide the 30 day notice period before its effective date. This rule removes the CSX Transportation Railroad bridge draw operation requirements under 33 CFR 117.415(b) and the US84 bridge draw operation requirements under 33 CFR 117.427, thus removing a regulatory restriction on the public. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the Federal Register. The CSX Transportation Railroad bridge and US84 bridge have been removed for 5 years and these rules merely require an

administrative change to the Code of Federal Regulations, in order to omit a regulatory requirement that is no longer applicable or necessary.

B. Basis and Purpose

The CSX Transportation Railroad bridge across Green River, mile 79.6, was removed in 2008 and the US84 bridge across Black River, mile 41.0 was removed and replaced with a fixed bridge in 2008. It has come to the attention of the Coast Guard that the governing regulations for these drawbridges were never removed subsequent to the removal of the drawbridges. The elimination of these drawbridges necessitates the removal of the drawbridge operation regulations, 33 CFR 117.415(b) and 33 CFR 117.427, that pertain to the former drawbridges.

The purpose of this rule is to remove the section (b) of 33 CFR 117.415 that refers to the CSX Transportation Railroad bridge at mile 79.6 and 33 CFR 117.427 that refers to the US84 bridge at mile 41.0, from the Code of Federal Regulations since it governs bridges that are no longer able to be opened.

C. Discussion of Rule

The Coast Guard is changing the regulations in 33 CFR 117.415(b) and 33 CFR 117.427 by removing restrictions and the regulatory burden related to the draw operations for

these bridges that are no longer in existence. The change removes the section (b) of the regulation governing the CSX Transportation Railroad bridge since the bridge has been removed from the waterway and the US84 bridge since the bridge has been replaced with a fixed bridge. This Final Rule seeks to update the Code of Federal Regulations by removing language that governs the operation of the CSX Transportation Railroad bridge, which in fact no longer exists and US84 bridge, which in fact is no longer a drawbridge. This change does not affect waterway or land traffic. This change does not affect nor does it alter the operating schedules in 33 CFR 117.415 (a) and (c) that govern the remaining active drawbridges on the Green River.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under

section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard does not consider this rule to be "significant" under that Order because it is an administrative change and does not affect the way vessels operate on the waterway.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will have no effect on small entities since these drawbridges have been removed and/or replaced with a fixed bridge and the regulations governing draw operations for these bridges are no longer applicable. There is no new restriction or regulation being imposed by this rule;

therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution

of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves removing 33 CFR 117.415(b) and 33 CFR 117.427 due to removal of drawbridges from the waterway. This rule is categorically excluded, under figure 2-1, paragraph (32) (e), of the Instruction.

Under figure 2-1, paragraph (32) (e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

§117.415 [Amended]

2. In §117.415, remove paragraph (b), and redesignate paragraph (c) as paragraph (b).

§ 117.427 [Removed]

3. Remove § 117.427.

Dated: March 28, 2013

Roy A. Nash, Rear Admiral
Commander, U.S. Coast Guard
Eighth Coast Guard District

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